

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ROSS MITCHELL and BLANCA
MITCHELL,

Plaintiffs,

vs.

PATHE DIALLO, WERNER ENTERPRISES,
INC., WERNER TRANSPORTATION, INC.,
GRA-GAR, LLC, WERNER GLOBAL
LOGISTICS, INC., WERNER GLOBAL
LOGISTICS, U.S., LLC, WERNER
LEASING, LLC, WERNER MANAGEMENT,
INC., PHILLIPS MANUFACTURING, CO.,
PHILLIPS MANUFACTURING CO. OF
OHIO, LLC, and PHILLIPS REALTY, LLC,

Defendants.

8:19CV570

ORDER TO SHOW CAUSE

This matter comes before the court after a review of the docket.

On December 16, 2020, Defendants filed an answer and counterclaim. (Filing No. 53). To date, no responsive pleading has been filed to Defendants' counterclaim.¹ See Fed. R. Civ. P. 12(a)(1)(B) ("A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim[.]"). Defendants have taken no further action as to their counterclaim and have a duty to prosecute their claims, and may, for example, seek default in accordance with the applicable rules, voluntarily dismiss their counterclaim, or take other action as appropriate. Under the circumstances, Defendants must make a showing of good cause for failure to prosecute or their counterclaim will be dismissed. Once all outstanding pleading matters are complete, the Court will enter a scheduling order in accordance with the Nebraska magistrate judges' practices posted at the court's [Civil Case Management](https://www.ned.uscourts.gov/attorney/judges-information/civil-case-management) website page.² Accordingly,

¹ This is particularly puzzling given Plaintiffs' repeated desire to commence discovery and Judge Buescher's observation in his Memorandum and Order dated January 26, 2021, that no responsive pleading to Defendants' counterclaim has been filed. (Filing No. 63).

²(<https://www.ned.uscourts.gov/attorney/judges-information/civil-case-management>).

IT IS ORDERED: On or before **February 18, 2021**, Defendants must show cause why their counterclaim should not be dismissed for failure to prosecute, or take other appropriate action.

Dated this 4th day of February, 2021.

BY THE COURT:

s/ Michael D. Nelson
United States Magistrate Judge